"Time to Protect Cambodian Migrants" Domestic Workers and Sub-Decree 190:
Foreword

This report considers the experiences of Cambodian migrant domestic workers in light of Sub-decree 190 on the Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies, a new regulation adopted by the Royal Government of Cambodia (RGC). Through an examination of international and Cambodian law and policy on labor migration, this report aims to highlight the need for the RGC to adopt binding legislation and other mechanisms to protect this sector of vulnerable workers.

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This report was written by Natalie Drolet, Legal Consultant and Advocacy Officer.
# Table of Contents

1. Sub-decree 190 and the current situation of Cambodian migrant domestic workers ........................................... 1
   Abuse of migrant domestic workers .......................................................................................................................... 2
   Sophap’s story ......................................................................................................................................................... 3

2. Sub-decree 190 and relevant Cambodian law ........................................................................................................ 5

3. Do the provisions of Sub-decree 190 provide adequate protections to migrant domestic workers? ..................... 8
   Minimum age for domestic workers .......................................................................................................................... 8
   Advertisements/ recruitment ...................................................................................................................................... 9
   Right to written and enforceable employment and job placement service contracts .................................................. 9
   Right to be informed of terms of employment ........................................................................................................ 11
   Right to be informed of terms of job placement service contract ............................................................................ 12
   Pre-departure training ................................................................................................................................................ 13
   Medical tests ............................................................................................................................................................. 14
   Hours of work and right to rest periods ................................................................................................................... 15
   Payment of wages ..................................................................................................................................................... 16
   Right to minimum wage ............................................................................................................................................ 17
   Right to social security .............................................................................................................................................. 17
   Occupational Health and Safety ............................................................................................................................. 17
   Right to decent living conditions ............................................................................................................................ 17
   Right to keep in one’s possession one’s travel documents .................................................................................... 18
   Confinement .............................................................................................................................................................. 18
   Physical, sexual and psychological abuse ................................................................................................................. 19
   Debt bondage ............................................................................................................................................................ 19
   Disappearance of workers ......................................................................................................................................... 20
   Right to a complaint mechanism ............................................................................................................................ 21
   Inspection of workplace ............................................................................................................................................. 21
   Inspection of recruitment agencies .......................................................................................................................... 22
   Access to justice/ dispute resolution ......................................................................................................................... 23
   Repatriation .............................................................................................................................................................. 24

4. Windows of opportunity for protections authorized by SD 190 .............................................................................. 24
   i) Bilateral agreement or MOU ................................................................................................................................... 25
   ii) Standardized Employment Contract .................................................................................................................. 26
   iii) Standardized Job Placement Services Contract ............................................................................................... 27
   iv) Standardized Training ........................................................................................................................................... 27
   v) Effective Implementation of the Sub-decree ........................................................................................................... 28

5. Recourse for domestic workers under Sub-decree 190 .......................................................................................... 28
   Guaranty Deposit ....................................................................................................................................................... 28
   Penalties for recruitment agencies ........................................................................................................................... 29
   Punishment by applicable law: contract, criminal, trafficking and international law .................................................. 30

6. Other recommendations for the protection of Cambodian migrant domestic workers ........................................... 32

7. References ............................................................................................................................................................... 34
1. Sub-decree 190 and the current situation of Cambodian migrant domestic workers

On August 17th, 2011, the Royal Government of Cambodia enacted Sub-Decree #190 on The Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies. The Sub-Decree is a regulation that replaces the previous Sub-Decree #57 on Sending Khmer Migrants Abroad (1995). The Sub-decree establishes the Ministry of Labor and Vocational Training (MoLVT) as the authority to grant licenses to Cambodian recruitment agencies to send workers abroad. It outlines the conditions for obtaining a license, and defines the framework of cooperation between the MoLVT and private recruitment agencies. Significantly, the Sub-Decree’s goals reflect the Government’s policy of encouraging migration abroad for work as a means of poverty alleviation for Cambodians.

The number of Cambodian domestic workers sent to Malaysia has increased dramatically since 2009, when Indonesia imposed a moratorium on sending its workers in response to widely reported abuses. According to the Cambodian Embassy in Malaysia, there were approximately 25,000 women working as domestic workers in Malaysia from 2008-2011. In order to migrate abroad for work, these women go through legal channels for migration, which involve being recruited, trained and sent by private recruitment agencies licensed by MoLVT in Cambodia. There are currently 37 licensed recruitment agencies in operation in Cambodia. While many women have positive experiences working abroad, the fact that they leave Cambodia with little or no legal protection to work in an unregulated labor sector means that they are among the most vulnerable of workers.

Domestic workers have traditionally been invisible and undervalued, and until recently, domestic work was not formally recognized by the international community. This changed in June

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1 Sub-decree No. 190 on the Management of the Sending of Cambodian Workers Abroad Through Private Recruitment Agencies, 2011, Royal Government of Cambodia, art. 5. [SD 190]
2 The goals of Sub-decree 190 are outlined in article 2: “Find the market and provide Cambodian workers with overseas jobs; improve the living conditions of the Cambodian people; ensure safety of Cambodian workers who work abroad; contribute to the development of human resources; and contribute to the implementation of the Royal Government of Cambodia’s policy on poverty reduction.”
4 Human Rights Watch, They Deceived Us at Every Step: Abuse of Cambodian Workers Migrating to Malaysia, (New York: Human Rights Watch, 2011) at 22. [HRW]
5 Statement by Hou Vuthy, Deputy Director of the MoLVT, on February 23, 2012 at Workshop on the Role of Trade Unions in the protection of Migrant Workers and the Development of a Migrant Worker Policy and Action Plan at the Sunway Hotel, Phnom Penh.
6 This is despite the fact that domestic workers make a “significant contribution… to the global economy, which includes increasing paid job opportunities for women and men workers with family responsibilities, greater scope for caring for ageing populations, children and persons with a disability, and substantial income transfers within and between countries,” according to the preamble of C189. C189 the Domestic Workers Convention, International Labor Organization, 2011. [C189]
2011, when International Labor Organization (ILO) member states adopted *Convention 189 Concerning Decent Work for Domestic Workers (C189)*, which is the first international convention to apply labor standards to domestic workers like other workers. C189 is a human rights convention that remedies the fact that domestic workers had been excluded from other labor conventions in the past. Although Cambodia has not yet ratified C189, it has ratified the *Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)*, and under CEDAW *General Recommendation No. 26*, member states are encouraged to “ratify all instruments relevant to the protection of the human rights of migrant women workers.”\(^7\) Thus, there is a strong argument in favor of Cambodia ratifying C189 to abide by its obligations under international law.

On October 15\(^{th}\), 2011, Cambodian Prime Minister Hun Sen released a *Sorachor* banning the sending of domestic workers to Malaysia amid a number of reported abuses both inside training centres in Cambodia and during the workers’ placements abroad.\(^8\) A number of high profile incidents occurred in the lead up to the ban. On October 11, a raid at the T&P recruitment agency in Kampong Cchang revealed that 35 out of 127 trainees were underage.\(^9\) The MoLVT ordered that the firm close permanently, which was the first time that such a measure was taken by the Government. On October 5, 22 trainees, who said they were being held against their will at the Century Manpower training center, were rescued. Four of these were found to be underage.\(^10\) These reports are emblematic of a much larger trend of abuses.

NGOs, Government officials, and other stakeholders have welcomed the ban. It sends a strong message to the Government of Malaysia that legal protections are needed to end labor exploitation of migrant domestic workers. It also creates an opportunity for the Royal Government of Cambodia to enact legal protections for some of its most vulnerable citizens.

**Abuse of migrant domestic workers**

Legal Support for Children and Women (LSCW) is a local Cambodian NGO that provides legal assistance to migrant domestic workers and other trafficking victims. In the 12 cases


\(^8\) *Sorachor No. 11 on the Prohibition of the Recruitment, Training and Transferring of Cambodian Migrant Domestic Workers*, 2011, Royal Government of Cambodia.


involving migrant domestic workers to Malaysia that LSCW received in 2011, workers have sought redress for a variety of serious abuses. Upon return to Cambodia, they have also complained of physical injuries and mental health problems. To illustrate the kinds of abuses that some migrant domestic workers experience, the story of one of LSCW’s clients will be shared here. To protect her identity, she will be referred to as Sopheap (not her real name).

**Sopheap’s story**

Sopheap is from Kampong Cham province. In 2008, when she was 16 years old, a broker working for T&P recruitment agency in her village told her that she could work abroad as a domestic worker and earn $180 USD per month. He said that it would be easy work, and that if she stayed longer than her 2-year contract, her salary would increase to between $250-300 USD per month. She would get 3 meals a day, which she would eat with her employer’s family. He promised that the recruitment agency would guarantee her safety while she was abroad and that she could contact her family at any time. Because Sopheap was underage, the broker told her that she could use a relative’s birth certificate to show that she was old enough to be recruited to work abroad.

Motivated by her desire to help her family financially, Sopheap agreed to be recruited using the false birth certificate. Upon her recruitment, T&P gave her mother $200 USD. Sopheap signed a contract that was not explained to her or that she received a copy of. She was told that the contract was for two years and that her salary would be deducted for the first 6 months. She then trained at the agency’s training center for a period of 3 months. When she arrived at her employer’s house in Malaysia, the work conditions were very different from what she was promised. She was forced to work every day from 5:30am until 1 or 2am with no day off. The work was very hard, taking care of 3 children and cleaning a large house and 4 cars. The employer only provided her with two meals a day, which comprised the family’s leftovers. She did not sit with the family at the table. While she was working, she did not receive her salary on a regular basis. To this day, she has not received all of the salary owed to her.

Sopheap’s employer used violence against her. If he was not happy with her work, he used a stapler to staple her fingers, toes, and ears. He regularly beat her with a rattan stick, and stepped on her head. One day, he kicked her against the kitchen counter, inflicting a serious injury to her leg. He took her to see a traditional healer, but refused to take her to the hospital to get proper medical care.
Sopheap contacted the Malaysian recruitment agency for help, but was told that she should not say anything about the violence and just continue to work, because she was obligated to finish the contract. Sopheap’s employer did not allow her to contact her family in Cambodia. She was not aware that she could contact the Cambodian Embassy in Kuala Lumpur or NGOs for help. With nowhere to turn, Sopheap stayed with the employer.

At the end of the contract, Sopheap returned to Cambodia, heard about LSCW and contacted the Legal Aid Project for help. She wanted to be paid the remainder of her salary, in addition to compensation for the violence inflicted on her by her employer and for her injuries. She had visible injuries to her fingers, toes, ears and leg when she returned, and sought medical attention. After negotiating with T&P, the agency promised to pay for her medical expenses, the salary owed to her and an amount for compensation.

However, following a raid at the T&P training center in October, 2011, police found 35 trainees who were underage. The training center was ordered to close permanently. An arrest warrant was issued for the president of T&P; however, he has fled and has not been brought to justice. As a result, Sopheap has not received the amounts owed to her by T&P.

This story reveals a situation that is all too common for Cambodian domestic workers in Malaysia. Young, often underage, women from rural areas are recruited into situations of debt bondage and forced labor. They are not aware of their legal rights or how to get help, and consequently, become victims of serious labor exploitation and even trafficking. Common complaints of migrant domestic workers in Malaysia in LSCW cases include: working excessively long hours with insufficient rest periods, no day off in a week, insufficient meals and accommodation, sexual abuse, physical abuse, psychological abuse, non-payment of wages, debt bondage, inability to contact their families in Cambodia, employer retaining their passport, confinement in the training center and the employer’s home, recruitment agencies complicit with forging identification documents, no complaint mechanism or assistance from recruitment agencies, type of work is not as stipulated in the contract, not understanding or receiving a copy of the contracts they sign, and insufficient medical care. In addition, there are barriers for redress upon their return to Cambodia.

In light of these abuses, this report will examine whether Sub-decree 190, as the primary instrument of protection for migrant domestic workers, goes far enough in protecting domestic workers. This report will focus on Cambodian migrant domestic workers working in Malaysia.
2. Sub-decree 190 and relevant Cambodian law

A major difficulty in Cambodia with regards to the recruitment, training and employment of migrant domestic workers is that there is no legislation governing labor migration. Domestic workers are also not protected like other workers under the labor law.\textsuperscript{11} Domestic work is expressly excluded from the Labor Code of Cambodia, but even if it were included, it would not apply to migrant domestic workers outside of Cambodia.\textsuperscript{12} This is because when a worker leaves Cambodia to work in a foreign country, the labor law of the country in which the work is performed governs the employment relationship. Another major difficulty is that employment in the domestic work sector is expressly excluded from most of the protections in the Malaysian Employment Act (1955).\textsuperscript{13}

In the absence of legislation governing labor migration, regulations have been enacted to oversee the employment relationship and relationship between the recruitment agency and the worker. The relevant regulations are Sub-decree 190, \textit{Prakas 108 on Education of HIV/AIDS, Safe Migration, and Labor Rights for Cambodian Workers Abroad}, and \textit{Circular 2647 on Directing Recruitment, Training, Transferring and Management of Cambodian Migrants to Work Abroad}. Of these regulations, the most important is Sub-decree 190.

Sub-decree 190 has the most legal weight of the three instruments, and is also the broadest in scope. To understand the protections from abuse and legal recourse for their breach afforded to domestic workers, it is important to understand the difference between legislation and regulations. The \textit{Constitution} is the supreme law in Cambodia, and the supreme lawmaking body is Parliament.\textsuperscript{14} Legislation, including the Criminal Code and Civil Code, for example, is adopted by Parliament and promulgated by the King. The principle of the separation of powers is found in article 51 of the Constitution, which states that “the legislative, Executive and Judicial powers shall be separate.”\textsuperscript{15} It follows that “any rules, regulations or other legal instruments issued by the executive must be authorized by legislation adopted by the National Assembly and Senate. Separation of powers cannot exist if the executive is also the basic lawmaker.”\textsuperscript{16}

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\textsuperscript{11} Domestic workers are expressly excluded from the \textit{Labor Code of Cambodia}, 1997, in article 1.
\textsuperscript{12} \textit{Labor Code of Cambodia}, 1997, Royal Government of Cambodia, art. 1. \textit{[Labor Code]}
\textsuperscript{13} Domestic workers are excluded from sections 12, 14, 16, 22, 61, 64, and parts IX, XII, XIIA of the \textit{Malaysia Employment Act 1953}, online: <http://www.ilo.org/dyn/natlex/docs/WEBTEXT/48055/66265/E55mys01.htm#c2>
\textsuperscript{14} \textit{Constitution of Cambodia}, 1993, Royal Government of Cambodia, arts. 131 and 90.
\textsuperscript{15} William A.W. Neilson and Helen Lansdowne, \textit{Rule of Law Norms Guidelines for Cambodian Legislators}, (Victoria: Centre for Asia Pacific Initiatives, 2002), at 2. \textit{[Rule of Law]}
\textsuperscript{16} \textit{Ibid.}
\end{flushright}
Regulations are a form of law, sometimes referred to as ‘subordinate legislation.’ Like legislation, they have binding legal effect. However, they are not adopted by the National Assembly and Senate or promulgated by the King. Rather, persons or bodies to whom Parliament has delegated the authority to make them, usually a head of a ministry, make them. Authority to make a regulation must be expressly authorized by legislation, sometimes called enabling legislation. Regulations are enacted to fill in the gaps in legislation and to implement the law.

Sub-decree 190, however, has not been authorized by enabling legislation and therefore does not have binding effect. Rather, it is a regulation that was issued by the Government. The Law on the Organization and Functioning of the Council of Ministers (1994) provides that the “Prime Minister shall sign on all what have been adopted by the Council of Ministers that will be enacted as Anukret, Decisions or Circulars.”17 State practice in Cambodia has been that sub-decrees are sometimes issued to fill in the gaps where there is no legislation covering a legal area. These usually constitute guidelines or rules and may provide some recourse for their breach. Sub-decrees are signed by the Prime Minister, but cannot be considered to be legislation or legally binding according to the Constitution. Similarly, individual heads of ministries have the authority to issue prakas and circulars “for enlightening the works/affairs and for giving instructions.”18

In the hierarchy of regulations, prakas and circulars are subordinate to sub-decrees. For example, Sub-decree 190 is able to expressly authorize prakas and circulars to be issued in relation to certain matters. Like the Sub-decree, these regulations would not be legally binding, as they do not correspond to a piece of enabling legislation. However, the prakas and circulars authorized by the Sub-decree would be subject to the recourses detailed in the Sub-decree, though these recourses are not legally binding.

Along with Sub-decree 190, the body of Cambodian regulations on labor migration includes Prakas 108 (2006) and Circular 2647 (2010), both issued by the MoLVT, to provide direction to recruitment agencies. The former deals with training curriculum, while the latter deals with debt bondage, forced labor and other illegal acts. As we will see, in some areas, these provide more specific rules than Sub-decree 190. Like Sub-decree 190, these two regulations have not been authorized by a piece of enabling legislation. As such, they are not legally binding.

A question that follows relates to the coherence of these regulations. Legal principles would posit that when different pieces of legislation are the product of the same Parliament, that

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18 Ibid. at art. 29.
uniformity of both expression and policy will be presumed, regardless of the date of enactment.\textsuperscript{19} It is only in cases of incoherence between pieces of legislation that the presumption that a later piece of legislation modifies an earlier law would apply. These legal principles apply to the law, and despite the fact that the body of regulations on labor migration in Cambodia is not legally binding, an argument could be made that the principles also apply to regulations.

If we presume that these principles apply, then Sub-decree 190 does not amend the other regulations, as they all deal with the same subject matter, and we can thus presume that they are coherent. This would mean that \textit{Prakas} 108 and Circular 2647 are applicable, as long as they do not conflict with Sub-decree 190. Thus, Sub-decree 190, \textit{Prakas} 108 and Circular 2647 together encompass a coherent whole representing the Government’s intent to regulate labor migration.

Because the body of regulations on labor migration does not amount to binding law, it is evident that there is a need for a comprehensive law on labor migration in Cambodia. Legislation would provide protection for workers’ rights and constitute a strong deterrent for employers and recruitment agencies to commit abuses. In 2010, Cambodia released its \textit{Labor Migration Policy for Cambodia}. The Policy is signed by the Minister of the MoLVT, and puts forth six policy recommendations relating to the protection and empowerment of migrant workers. In brief, these are: eliminating misleading advertising, disseminating information pre-employment, implementing legislation with effective enforcement mechanisms, establishing a list of the fees charged by recruitment agencies to workers, working with destination countries for the adoption of standardized and enforceable employment contracts, supporting vocational training, and implementing a complaint mechanism and provide effective remedies to migrants when their rights are violated.\textsuperscript{20}

From these policy recommendations, it is apparent that there is political will to enact legislation on labor migration. The labor migration law should be comprehensive, setting out all applicable laws to labor migration procedure and practices. This would facilitate compliance and enforcement. While the Government has taken steps to regulate labor migration, it is time to enact legislation that will guarantee the rights of migrant workers, including domestic workers.

\textsuperscript{19} The rule of \textit{in pari materia} is that “statutes \textit{in pari materia} must be interpreted in light of each other since they have a common purpose for comparable events or items.” Taken from The Gale Group, \textit{West's Encyclopedia of American Law}, 4\textsuperscript{th} ed, (Los Angeles: West Group Publishing, 2008).

\textsuperscript{20} \textit{Labor Migration Policy for Cambodia}, Royal Government of Cambodia, 2010, at 4-5.
3. Do the provisions of Sub-decree 190 provide adequate protections to migrant domestic workers?

Although the new Sub-decree 190 has expanded on the scope of Sub-Decree 57, it has in fact backtracked on many of the protections enshrined by its predecessor. In addition, some of its provisions are less specific than rules found in Prakas 108 and Circular 2647. To consider whether the provisions of Sub-decree 190 provide adequate protections to migrant domestic workers, the substance of the provisions will be examined in light of international standards enshrined in ILO Convention 189 Concerning Decent Work for Domestic Workers, its accompanying Recommendation 201 and CEDAW General Recommendation No. 26. General Recommendation No. 26 addresses sex- and gender- based human rights concerns of women migrant workers.21

In addition, according to rule of law principles, laws should have legal certainty. This means that “laws are known and understood by the public, clear in meaning and apply equally to everyone.”22 For a law to have legal certainty, it must be written in “clear language that leaves no doubt about the law’s meaning or the legal consequences of the law’s application.”23 Thus, not only must the law be known to the public, but their content must be easily understood. With regards to Sub-decree 190, it is important that the provisions are clear and specific enough to comply with and to be enforced.

Minimum age for domestic workers

Both Sub-decree 57 and the new Sub-decree 190 stipulate that they apply to workers 18 years of age and over.24 This is in line with the national labor law, and conforms to international standards, as it is not lower than national laws and regulations for workers generally.25 Child labor is expressly prohibited in Circular 2647 and is prohibited for children under the age of fifteen in the Labor Code.26 However, the recruitment of workers under the age of 18 is prevalent, as it has been found that “only 52% of Cambodians were a suitable age for overseas domestic employment

21 According to article 5 of CEDAW General Recommendation No. 26, “Migration is not a gender neutral phenomenon. The position of female migrants is different from that of male migrants in terms of legal migration channels, the sectors into which they migrate, the forms of abuse they suffer and the consequences thereof.”
22 Rule of Law Norms, supra note 15 at 3.
23 Ibid.
24 Sub-decree No. 57 on the Export of Khmer Labor to Work Overseas, 1995, Royal Government of Cambodia, art. 3. [SD 57] See also Sub-decree 190, supra note 1 at art. 4.
25 C189, supra note 6 at art. 4(1).
26 Letter No. 2647, 2010, Ministry of Labor and Vocational Training, at art. 8. [Circular 2647] See also Supra note 12 at art. 177.
in Malaysia under the laws of both Cambodia and Malaysia.”27 With such a high percentage of underage workers being recruited for domestic work, it follows that identity documents are thus forged or falsified. Yet, Sub-decree 190 does not prohibit this practice, even though it is prohibited in Circular 2647 and the Cambodian Criminal Code.28

Advertisements/recruitment

Sub-decree 190 stipulates that “advertisements of the recruitment agencies shall be appropriate and comprehensive according to the facts regarding selection requirement, working conditions and benefits to be entitled during the employment without lying or cover-up.”29 This provision is a protection against fraudulent practices in the recruitment of workers. While it clearly applies to advertisements, it does not clearly state that it applies to the advertisements of third party brokers hired by the recruitment agencies, who are responsible for recruiting the majority of domestic workers.

Circular 2647 states that recruitment agencies should draft an advertisement specifying definitions, conditions of recruitment, and salary to be submitted to the MoLVT for approval before it is made public.30 However, this is not a requirement for recruitment agencies or their brokers under Sub-decree 190.

Right to written and enforceable employment and job placement service contracts

Sub-decree 190 brings clarity to the types of labor migration contracts that the parties enter into: the employment contract between the foreign employer and the employee, the job placement service contract by the recruitment agency and the employee, and the contract between the recruitment agency and the MoLVT.31 This is an improvement over the old Sub-decree, which provided that the employment contract was signed between the worker and the recruitment agency,32 which was not the case in practice. Although the necessary relevant

28 Criminal Code, 2009, Royal Government of Cambodia, at art. 377. [Criminal Code]. See also Circular 2647, supra note 26 at art. 9.
29 Sub-decree 190, supra note 1 at art. 22.
30 Circular 2647, supra note 26 at art. 3.
31 Sub-decree 190, supra note 1 at art. 15.
32 Circular 2647, supra note 26 at art. 12.
contracts are now specified, their content as to minimum required labor standards is not. Article 18 authorizes the drafting of standard contracts, “determined by a Prakas from the Ministry of Labor and Vocational Training,” which could fill in the gaps by clearly stipulating the rights and obligations of the parties. The Association of Cambodian Recruitment Agencies (ACRA) in its Code of Conduct (2009) for its recruitment agency members has also mandated a standardized employment contract.

According to international standards in C189, the employment contract should be enforceable in the destination country and be signed prior to crossing the national border. Sub-decree 190 provides that the employment contract shall be “in compliance with the applicable laws and regulations of the receiving country.” However, it does not stipulate that it be signed prior to crossing the national border.

For the contract to be enforceable, the workers must be well informed of the terms of the contracts prior to signing or affixing their thumbprint. However, a large majority of migrant domestic workers cannot read or do not understand their contracts. General Recommendation No. 26 stipulates that “States parties should ensure the availability of legal assistance in connection with migration for work. For example, legal reviews should be available to ensure that work contracts are valid and protect women’s rights.” Recommendation No. 201 also states that appropriate assistance should be provided to domestic workers to ensure that they “understand their terms and conditions of employment.” Thus, it has been recognized that domestic workers should have the right to independent legal counsel before signing their contracts. However, this is not mandated in Sub-decree 190.

Workers must also have in their possession copies of the contracts. Significantly, the Sub-decree does not oblige the recruitment agency to provide copies of these contracts to the worker. Without their contracts in hand, it is very difficult for workers to claim their rights or for their lawyers to pursue legal action.

33 Sub-decree 190, supra note 1 at art. 18.
34 Code of Conduct, 2009, Association of Cambodian Recruitment Agencies, at art. 3.4. [ACRA]
35 C189, supra note 6 at art. 8(1).
36 Sub-decree 190, supra note 1 at art. 17.
37 UNIAP, supra note 27 at 32.
38 Gen. Rec. 26, supra note 7 at art. 24(f).
39 Recommendation No. 201, 2011, International Labor Organization, at art. 6(1). [Rec. 201]
Right to be informed of terms of employment

Both the new and old sub-decrees set out the minimum information that must be included in the employment contract. However, the new Sub-decree significantly backtracks on the old. Sub-decree 57 provided that the employment contract must contain the following minimum information: “name and address of each party; start and termination date of the work; location and nature of the work; skills of labor; salaries and remunerations; portion of the salary and other remunerations which shall be sent to the worker’s family; working hours, weekends and annual holidays; lodging accommodation, food, clothing, medical care; insurance premium for each labor; mode of delivery of workers to and from the work location; expenses of transport of labor to and from; and provisions for repatriating workers prior to the normal termination of the employment contract.”\textsuperscript{40} The old Sub-decree also stipulated that the employment contract would not exceed two years.\textsuperscript{41}

Sub-decree 190, on the other hand, provides that “the employment contract shall clearly specify, inter alia, working conditions, job status, and types of work, benefits and key addresses that can be contacted.”\textsuperscript{42} There is no provision regarding the length of the contract. The minimum required information is thus described in more general, umbrella terms, most notably with the words ‘working conditions’ and ‘benefits.’ The meaning of these terms is not specified, and could thus refer to a wide variety of protections. The term ‘working conditions’ could include salary, working hours, weekly time off, and annual holidays, as was laid out in its predecessor. The word ‘benefits’ could include insurance premiums, transport expenses, medical care, and so on. That the minimum information required is general rather than specific opens up the possibility that employment contracts will be drafted without reference to a number of important protections. A standard employment contract that references these protections could be a panacea to this problem.

Article 21 of Sub-decree 190 provides that “the recruitment agencies shall be responsible for the working conditions and living conditions before recruiting workers for overseas work such as types of work, workplace, working hours, skills, salary, benefits, health insurance, accommodation, transport, security and safety within the working and accommodation areas;”\textsuperscript{43}

\textsuperscript{40} Sub-decree 57, supra note 24 at 9.
\textsuperscript{41} Circular 2647, supra note 26 at art. 11.
\textsuperscript{42} Sub-decree 190, supra note 1 at art. 15
\textsuperscript{43} Sub-decree 190, supra note 1 at art. 21.
however, minimum requirements are not specified, and it is not specified that these will be included in the contract.

International standards in C189 stipulate that contracts must specify the following terms and conditions of employment: “the name and address of the employer and of the worker; the address of the usual workplace or workplaces; the start date and, where the contract is for a specified period of time, its duration; the type of work to be performed; the remuneration, method of calculation and periodicity of payments; the normal hours of work; paid annual leave, and daily and weekly rest periods; the provision of food and accommodation, if applicable; the period of probation or trial period, if applicable; the terms of repatriation, if applicable; and terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.” Recommendation No. 201 adds that the terms and conditions of employment should also include a “job description, sick leave and other personal leave, the rate of pay for overtime, payments in kind and their monetary value, details of accommodation provided, and authorized deductions from the worker’s wages.” Including this information in the employment contract means that domestic workers would be well informed of their working conditions and benefits pre-departure.

**Right to be informed of terms of job placement service contract**

Sub-decree 190 does not confer the right to be informed of the terms of the job placement service contract, or specify the minimum information that must be included in this contract. This is despite the fact that recruitment agencies are responsible for most aspects of the migration process, including: “recruitment, filing applications for passports and work permits, pre-departure orientation and training, medical examinations, transit, negotiating of contracts with foreign recruiting agents and placement with employers.” Abuses can and do occur at any stage in this process. It has been advanced that the job placement services contract should include the rights and obligations of recruitment agency, right to terminate the contract, rights and methods to change employers, prohibition of deductions to salary, training provided by RA, liability for costs, repatriation in all circumstances, complaints mechanism, and a clear method of resolving

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44 C189, *supra* note 6 at art. 7.
45 Rec. 201, *supra* note 39 at art. 6(2).
disputes. However, without these protections in the job placement service contract, the domestic worker becomes vulnerable to abuse.

Pre-departure training

The new Sub-decree presents a regression from the old in terms of the content of pre-departure training. Sub-decree 57 specified that pre-departure training would cover “work system, customs and traditions and the basic laws of the country of the Receiver Party.” The new Sub-decree does not outline any required curriculum, but it does state that the recruitment agency must have an appropriate training center and language teachers “for pre-departure training in accordance with the guideline.” Thus, the new Sub-decree authorizes the drafting of a guideline for standardized training.

Even though training on culture and law was required under the previous Sub-decree, “less than half of the women interviewed reported that they received training on culture (40%) and labor law (29%).” This is despite the fact that the Prakas 108 on Education, on HIV/AIDS, Safe Migration and Labor Rights for Cambodian Workers Abroad (2006) states that migrants should receive pre-departure training on HIV/AIDS, safe migration and labor rights. In addition, Prakas 108 provides for inspections at the recruitment agencies to ensure compliance with the training requirements.

When trainings on safe migration and the law took place, they were conducted by NGO partners, including LSCW. Thus, it is significant that Sub-decree 190 also provides that “in conducting pre-departure training and orientation courses, the recruitment agencies shall cooperate with the Ministry of Labor and Vocational Training and other relevant institutions.” The ACRA Code of Conduct goes further in stating “ACRA should set up a pre-departure training committee by cooperating with ministry of labor and vocational training and Partner NGOs for making sure that workers are basically educated.” General Recommendation No. 26 also states that pre-departure training should be standardized and that its content should be developed in

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47 UNIAP, supra note 27 at 37.
48 Circular 2647, supra note 26 at art. 14
49 Sub-decree 190, supra note 1 at art. 7
50 UNIAP, supra note 27 at 30.
51 Prakas No. 108 on Education of HIV/AIDS, Safe Migration, and Labor Rights for Cambodian Workers Abroad, 2006, at arts. 2 and 5. [Prakas 108]
52 UNIAP, supra note 27 at 23.
53 ACRA, supra note 34 at art. 3.28.
close consultation with NGOs.\textsuperscript{54} This kind of cooperation for the standardization of the pre-departure training curriculum will ensure that the workers are well informed about their rights and how to stay safe.

General Recommendation No. 26 provides that the training program should include “labor contracts, legal rights and entitlements in countries of employment, procedures for invoking formal and informal redress mechanisms, processes by which to obtain information about employers, cultural conditions in countries of destination, stress management, first aid and emergency measures, including emergency telephone numbers of home embassy, and services, information about safety in transit, including airport and airline orientations and information on general and reproductive health, including HIV/AIDS prevention.”\textsuperscript{55} It also stipulates that recruitment agencies should sensitize themselves on “the rights of women migrant workers, the forms of sex- and gender-based discrimination, the exploitation women could experience and responsibilities of agencies towards the women.”\textsuperscript{56} Gender considerations, including gender-based discrimination, however, are absent in Sub-decree 190.

**Medical tests**

A number of medical tests are required for migrants traveling to Malaysia. These include: pregnancy, HIV, hepatitis A, B, and C, syphilis, tuberculosis and malaria.\textsuperscript{57} However, according to Recommendation No. 201, domestic workers should not be subject to discriminatory testing, including pregnancy or HIV testing, or disclose their HIV or pregnancy status.\textsuperscript{58}

Sub-decree 190 states that it is the responsibility of the recruitment agencies for the health checkup of the workers.\textsuperscript{59} However, this provision does not address any requirements with regards to the testing. It has been found that testing has taken place inside the recruitment agencies, even though this practice is illegal, according to the *Law on Prevention and Control of HIV/AIDS* (2002).\textsuperscript{60} In addition, the Sub-decree “fails to specify minimum standards and conditions

\begin{flushleft}
\textsuperscript{54} Gen. Rec. 26, supra note 7 at art 24(b).
\textsuperscript{55} Gen. Rec. 26, supra note 7 at art. 24(b)(i).
\textsuperscript{56} Gen. Rec. 26, supra note 7 at art. 24(b)(iv).
\textsuperscript{57} Human Rights Watch, supra note 4 at 40.
\textsuperscript{58} Rec. 201, supra note 39 at arts. 3(a), (b), and (c).
\textsuperscript{59} Sub-decree 190, supra note 1 at art. 19.
\textsuperscript{60} Human Rights Watch, supra note 4 at 41.
\end{flushleft}
to ensure voluntariness, informed consent, confidentiality and referral for post-test counseling and care, particularly for HIV testing.”

General Recommendation No. 26 states that “all required pre-departure HIV/AIDS testing or pre-departure health examinations must be respectful of the human rights of women migrants. Special attention should be paid to voluntariness, the provision of free or affordable services and to the problems of stigmatization.” In addition, Recommendation No. 201 states that medical tests should respect the confidentiality and privacy of domestic workers.

**Hours of work and right to rest periods**

International standards in C189 stipulate that weekly rest for domestic workers is at least 24 consecutive hours. However, most workers do not get a day off in a week. Recommendation No. 201 stipulates that domestic workers are entitled to suitable rest periods during the work day for meals and breaks. In addition, periods when domestic workers are required to be in the household, but are not free to dispose of their time as they please and are “on call” should be regarded as hours of work. Domestic workers who reside in the household of their employer “are not obliged to remain in the household or with household members during periods of daily or weekly rest and annual leave.” In addition, there must be “equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements.” General Recommendation No. 26 reiterates the point that women migrant workers should have the same rights and protections as other workers in the destination country. Domestic work should be “protected by labor laws, including wage and hour regulations, health and safety codes and holiday and vacation leave regulations.”

Sub-decree 190 does not specify any standards with regards to hours of work or rest periods. Sub-decree 57 provided for paid annual leave in the amount of 1.5 days per month

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61 Human Rights Watch, supra note 4 at 43.
62 Gen. Rec. 26, supra note 7 at art. 24(d).
63 Rec. 201, supra note 39 at art. 3(A).
64 C189, supra note 6 at art. 10(2).
65 Human Rights Watch, supra note 4 at 61.
66 Rec. 201, supra note 39 at art. 10.
67 C189, supra note 6 at art. 10.
68 C189, supra note 6 at art. 9.
69 C189, supra note 6 at art. 10.
70 Gen. Rec. 26, supra note 7 at art. 26(b).
worked, but was otherwise silent on hours of work, and daily and weekly rest periods. The right to paid annual leave was removed in its successor. With no protections relating to hours of work and rest periods, domestic workers become vulnerable to forced labor. While Sub-decree 190 is silent on the issue of forced labor, it is prohibited in Circular 2647. Thus, even though domestic workers are not protected under the labor law in Malaysia, it follows that their working conditions as specified in the employment contract should be in line with those for other workers in Malaysia.

**Payment of wages**

According to international standards in C189, domestic workers are to be paid at regular intervals, at least once a month. Wages shall be paid in cash, or by other means (bank transfer, etc.) with the consent of the worker. This is generally not the norm, as “most workers [are] paid for their two years of work on completion of their contract.” In addition, “under-payment or non-payment of wages and physical abuse are the most common complaints the [MoLVT] receives from returned domestic workers.”

Sub-decree 190 and its predecessor do not specify how wages are to be paid to the worker. It provides for assistance from the recruitment agency to open a bank account. However, it provides no assurance that workers will be paid monthly, or on a regular basis.

International standards in C189 address payments in kind, such as payments for accommodation and food, stating that they must be agreed to by the worker, “for the personal use and benefit of the worker, and that the monetary value attributed to them is fair and reasonable.” However, it has been found that about 1/3 of the domestic workers whose salary is deducted feel they were cheated by such deductions, because they “had not agreed to or were not made aware of” the deductions. Sub-decree 190 does not address the issue of payments in kind.

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71 Sub-decree 190, supra note 1 at art. 10.
72 Circular 2647, supra note 26 at art. 6.
73 C189, supra note 6 at art. 12(1).
74 UNIAP, supra note 27 at 40 states that: “of the 74% paid with delays, 61% of those had all their wages withheld for two years, until contract completion.”
75 UNIAP, supra note 27 at 57.
76 Sub-decree 190, supra note 1 at art. 35.
77 C189, supra note 6 at art. 12(2).
78 UNIAP, supra note 27 at 43.
Right to minimum wage

Both Sub-decree 190 and 57 do not provide that workers are to receive the minimum wage like other workers. International standards in C189 stipulate that domestic workers are to receive the minimum wage, where such coverage exists. 79

Right to social security

International standards stipulate that social security protection must be as favorable as those that apply to workers generally, and that this protection must include maternity. 80

Sub-decree 190 stipulates that it is the responsibility of recruitment agencies to ensure that workers “receive appropriate social security regime in accordance with the applicable laws and regulations of the receiving country.” 81 A major difficulty with this provision is that domestic work is excluded from most of the Malaysian employment law, and therefore, domestic workers would also be excluded from social security regimes in Malaysia.

Occupational Health and Safety

According to international standards in C189, “every domestic worker has the right to a safe and healthy working environment” and member states shall ensure “the occupational safety and health of domestic workers.” 82 Recommendation No. 201 adds that there should be “adequate penalties for violation of occupational safety and health laws and regulations.” 83 Sub-decree 190 does not include occupational safety and health protections. It states that recruitment agencies shall be responsible for the “security and safety within the working and accommodation areas;” 84 however, it does not specify any standards.

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79 UNIAP, supra note 27 at art. 11.
80 UNIAP, supra note 27 at art. 14.
81 Sub-decree 190, supra note 1 at art. 33.
82 C189, supra note 6 at art. 13(1).
83 Rec. 201, supra note 39 at art. 19(b).
84 Sub-decree 190, supra note 1 at art. 21.
Right to decent living conditions

International standards in C189 set out that if domestic workers reside in the household of their employer that they enjoy “decent living conditions that respect their privacy.” Recommendation No. 201 elaborates that accommodations should consist of a private room equipped with a lock, and that meals be of sufficient quality and quantity. Sub-decree 190 provides that “the recruitment agencies shall be responsible for the working conditions and living conditions before recruiting workers for overseas work;” however, no minimum requirements are specified. Workers are commonly deprived of adequate food, in both quality and quantity.

With regards to living conditions at the recruitment agency’s training center, the Sub-decree provides for “proper accommodation and dining areas that ensure good health, sanitation, and safety,” but again, does not specify minimum requirements. Many trainees have reported poor conditions at the training centers: “the centers are typically overcrowded, the food is inadequate and health care is virtually non-existent. Many said that they were sick during their stay in the training center due to poor nutrition, excessive work, and inadequate sleep.”

Right to keep in one’s possession one’s travel documents

International standards under both C189 and General Recommendation No. 26 stipulate that workers who reside in their employer’s household “are entitled to keep in their possession their travel and identity documents.” This protection is absent in both the old and new sub-decrees. It is common practice for employers to confiscate the passports of workers. Workers are also frequently restricted from leaving the home, speaking to neighbors or calling family members back home. This is also a problem in the recruitment agencies. When workers are at the training center, frequently their identity documents are confiscated for the duration of the training.

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85 C189, supra note 6 at art. 6.
86 Rec. 201, supra note 39 at art. 17.
87 C189, supra note 6 at art. 21.
88 Human Rights Watch, supra note 4 at 61.
89 Sub-decree 190, supra note 1 at art. 7.
90 Human Rights Watch, supra note 4 at 49.
91 C189, supra note 6 at art. 9. See also Human Rights Watch, supra note 4 at art. 24(e).
92 Human Rights Watch, supra note 4 at 61.
93 Human Rights Watch, supra note 4 at 48.
Confineent

Confineent of workers is a problem in both the training centers and in the home of the employer in the destination country. Workers have reported that they were confined in the training center for the entire duration of the training with “limited access to their families or telephones, and that a guard was always present.”

Workers are also confined in the home of their employer in Malaysia, where many are not permitted to leave the home unsupervised. Circular 2647 prohibits the confining of migrants. General Recommendation No. 26 states that destination countries should provide legal protection for the freedom of movement, to “end the forced seclusion or locking in the homes of women migrant workers.” C189 states that domestic workers should be free to “reach an agreement with their employer or potential employer on whether to reside in the household.” Sub-decree 190 does not address this problem.

Physical, sexual and psychological abuse

It has been found that 20% of migrant domestic workers experience threats and verbal abuse by trainers at the training center. Some domestic workers have reported “verbal abuse or physical abuse, such as beatings with sticks, mostly for failure to learn to English or Chinese words.”

Workers frequently experience some form of physical or psychological abuse at the hands of their employers. Some are victims of rape or other sexual abuse. Where workers experience physical or sexual abuse, they typically do not receive appropriate medical care for their injuries.

Despite this, Sub-decree 190 is silent on taking measures to protect workers from abuse. International standards in C189 stipulate that domestic workers must “enjoy effective protection against all forms of abuse, harassment and violence.”

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94 Human Rights Watch, supra note 4 at 46.
95 Human Rights Watch, supra note 4 at 61.
96 Circular 2647, supra note 26 at art. 10.
97 Gen. Rec. 26, supra note 7 at art. 26(d).
98 C189, supra note 6 at art. (a).
99 UNIAP, supra note 27 at 31.
100 Human Rights Watch, supra note 4 at 51.
101 Human Rights Watch, supra note 4 at 59.
102 C189, supra note 6 at art. 5.
Debt bondage

International standards stipulate that “fees charged by private employment agencies are not deducted from the remuneration of domestic workers.”\footnote{C189, supra note 6 at art. 15(e).} Sub-decree 190 does not prohibit salary deductions for recruitment fees or enticement loans. This results in a situation of debt bondage for workers. Furthermore, “there are no policies standardizing or regulating recruitment agency charges and fees.”\footnote{UNIAP, supra note 27 at 38.} It has been found that domestic workers are charged between $2000 and $2676 USD each, an amount that would be docked from their pay for a period of 4.5 to 12 months.\footnote{UNIAP, supra note 27 at 27.} Furthermore, “labor agencies commonly provide cash advances for recruitment fees, or $100 to $200 to the family or domestic worker after she registers and agrees to stay in the training center. The family or worker is promised another payment of $150 to $200 after the worker departs to Malaysia. Additionally, labor agents provide mobile phones, bags of rice or a cow at the time of registration as incentive.”\footnote{UNIAP, supra note 27 at 52.} If a worker wishes to discontinue training and return home, she is liable to pay back her outstanding debt to the recruitment agency, which is often an inflated amount that she cannot afford.\footnote{Circular 2647, supra note 26 at art. 7.}

Circular 2647 explicitly prohibits debt bondage.\footnote{Circular 2647, supra note 26 at art. 1.} It also states that recruitment agencies should prepare a fee schedule for domestic workers, which should clearly specify the fees the company and the worker are responsible for paying. The fee schedule would then be sent to MoLVT for approval.\footnote{ACRA, supra note 34 at art. 3.7.} The ACRA Code of Conduct also calls for transparency in relation to service fees charged by recruitment agencies and states that fee schedules should be approved by the MoLVT.

Disappearance of workers

Sub-decree 190 addresses the disappearance of workers in two scenarios, during the period of the job placement services contract and during the period of the employment contract. In the first scenario, the recruitment agency will advise the competent authorities, the Mol, and
the MoLVT.\textsuperscript{111} It is unclear whether ‘competent authorities’ refers to the police, or other authorities. In the latter, it will advise the Cambodian embassy, the MoI and the MoLVT.\textsuperscript{112} Notably, the competent authorities have been omitted in this case. While the articles confer a duty to inform, they do not confer a duty to investigate. Significantly, there is no obligation on the part of the recruitment agency to advise the families of the worker that she has disappeared.

Similarly, there is no obligation on the part of the recruitment agency to investigate when family members in Cambodia inquire about the migrant relatives they have not heard from in an unreasonable amount of time. In many cases, the recruitment agency “[promises] to find their relatives, but [does] not provide them with the necessary assistance nor follow up on their complaints.”\textsuperscript{113}

The Sub-decree also does not stipulate the obligations of the recruitment agency or the rights of the worker with regards to procedures in the case of the death of the worker. This is despite the fact that there have been 9 deaths of Cambodian migrant domestic workers in Malaysia in 2011 alone.\textsuperscript{114}

**Right to a complaint mechanism**

International standards in C189 provide for an effective and accessible complaint mechanism for domestic workers to report cases of abuse, harassment and violence.\textsuperscript{115} Similarly, adequate procedures must be in place to investigate worker complaints on alleged abuses, and fraudulent practices by the recruitment agency.\textsuperscript{116} Yet, procedures for a complaint mechanism are absent in Sub-decree 190. Rather, it merely refers to resolving disputes following the conciliatory principle.

The new Sub-decree provides that the recruitment agencies shall provide information to the worker on how to contact the Cambodian embassy and MoLVT.\textsuperscript{117} When the worker is sent abroad, the agency is also responsible for sending a report to the embassy,\textsuperscript{118} and for forwarding

\textsuperscript{111} Sub-decree 190, supra note 1 at art. 31.
\textsuperscript{112} Sub-decree 190, supra note 1 at art. 32.
\textsuperscript{113} Human Rights Watch, supra note 4 at 39.
\textsuperscript{115} Sub-decree 190, supra note 1 at art. 17.
\textsuperscript{116} Sub-decree 190, supra note 1 at art. 15.
\textsuperscript{117} Sub-decree 190, supra note 1 at art. 20.
\textsuperscript{118} Sub-decree 190, supra note 1 at art. 24.
to it a copy of the employment and job placement service contracts.\textsuperscript{119} However, it does not stipulate that the worker should contact the embassy or the MoLVT if she needs to file a complaint regarding the employer or recruitment agency, and does not confer an obligation on the part of the embassy or MoLVT to intervene. General Recommendation No. 26 states that diplomatic and consular staff should protect the rights of women migrant workers abroad, including “timely provision of interpreters, medical care, counseling, legal aid and shelter when needed.”\textsuperscript{120} This is absent in Sub-decree 190.

Sub-decree 190 also stipulates that a condition to receiving a license to operate as a recruitment agency is that it must have a permanent representative in the receiving country.\textsuperscript{121} However, the Sub-decree does not expand on the role and obligations of that permanent representative, or whether they are to receive and/or investigate complaints.

**Inspection of workplace**

International standards in C189 provide for “labor inspection, enforcement and penalties... [that] specify the conditions under which access to household premises may be granted.”\textsuperscript{1} The old Sub-decree provided for inspection by the MoLVT of the living and working conditions in the destination country according to the provisions of the contract. It also stipulated that the costs associated with the inspections would be borne by the recruitment agency.\textsuperscript{1} Despite this, it has been found that only about 7% of domestic workers reported having had their workplace inspected.\textsuperscript{1} The new Sub-decree removes this requirement for inspection and monitoring of the workplace.

**Inspection of recruitment agencies**

Sub-decree 190 provides that the MoLVT “shall conduct ordinary inspections and special inspections of the recruitment agencies.”\textsuperscript{1} It is not clear what constitutes the procedure for inspections, particularly what constitutes ‘ordinary’ and ‘special’ inspections and what would trigger each. It is also not clear which body is responsible for paying the costs associated with

\textsuperscript{119} Sub-decree 190, supra note 1 at art. 17.
\textsuperscript{120} Gen. Rec. 26, supra note 7 at art. 24(j).
\textsuperscript{121} Sub-decree 190, supra note 1 at art. 7.
inspection. While the MoLVT started to inspect the conditions in training centers in 2010, it has “not developed minimum standards for space, food, sanitation, and medical care.”\textsuperscript{1}

General Recommendation No. 26 states that monitoring systems should be designed to ensure that recruitment agencies “respect the rights of all women migrant workers.”\textsuperscript{1} However, consideration of gender is absent from Sub-decree 190.

\textit{Access to justice/ dispute resolution}

International standards in C189 stipulate that domestic workers shall have effective access to courts, tribunals, or other dispute resolution mechanisms.\textsuperscript{12} While dispute resolution for conflicts between the employer and the worker is covered in both sub-decrees, the provisions relating to dispute resolution in the old sub-decree are more robust. There, it specified that the dispute should be settled in accordance with the employment contract.\textsuperscript{12} It went on to state that if a deadlock was reached, the dispute would be sent to the Embassy or other diplomatic officials for their intervention.

The new Sub-decree simply states that the recruitment agency and the embassy or other diplomats will participate in the resolution process and that in “necessary cases” a lawyer will be hired at the cost of the recruitment agency.\textsuperscript{14} It thus removes the provision of settling according to the employment contract. This marks a regression, as the employment contract is binding between the parties. Furthermore, this provision does not specify a procedure for dispute resolution, the steps involved in resolving conflicts, or what would constitute a “necessary” case for the purpose of retaining a lawyer.

If a dispute arises pre-departure, Sub-decree 190 states that the dispute will be resolved according to the “labor law and other applicable regulations of the Kingdom of Cambodia.”\textsuperscript{15} This clause is concerning, because the labor law does not apply to the job placement service contract. It is not clear what other applicable regulations would apply. It is also concerning that the recruitment agency is not obliged to provide the services of a lawyer in the case of disputes involving the recruitment agency.

General Recommendation No. 26 specifies that legal remedies be available to women migrant workers when their rights are violated. In addition, the destination country should ensure

\textsuperscript{12} C189, supra note 6 at art. 16.
\textsuperscript{13} Sub-decree 57, supra note 24 at art. 17.
\textsuperscript{14} Sub-decree 190, supra note 1 at art. 30.
\textsuperscript{15} Sub-decree 190, supra note 1 at art. 29.
that women migrant workers have access to legal assistance, including free legal aid, and that women who have been abused by their employers can access temporary shelters.\textsuperscript{126} Sub-decree 190 does not address the issue of legal remedies for the violation of the rights of women migrant workers.

\textbf{Repatriation}

International standards in C189 provide that “the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract”\textsuperscript{127} must be specified. General Recommendation No. 26 states that women who wish to return to their country of origin should be “able to do so free of coercion and abuse.”\textsuperscript{128}

Sub-decree 190 states that upon expiry of the contract, the recruitment agencies shall arrange the repatriation of workers.\textsuperscript{129} It does not provide for repatriation if the contract is terminated before its expiry. In addition, the Sub-decree stipulates that “the recruitment agencies shall provide appropriate services in order to ensure that workers return to the Kingdom of Cambodia safely;”\textsuperscript{130} however, the “appropriate services” are not defined. Sub-decree 190 also does not specify who will pay the costs of repatriation, whether at the completion of the contract or prior to its expiry.

\textbf{4. Windows of opportunity for protections authorized by SD 190}

As it stands, Sub-decree 190 provides minimal protections to workers. However, it does authorize the issuance of regulations to fill in the gaps to bring clarity to the protections afforded migrant domestic workers. Given that Sub-decree 190 marks a regression from Sub-decree 57 insofar as protections for workers is concerned, one can infer that the Government intended for worker’s rights to be defined in these forthcoming regulations. To ensure that this is realized, the Government should draft the regulations in consultation with civil society, including NGOs, returnee domestic workers and employer organizations.\textsuperscript{131} While Sub-decree 190 and the regulations it authorizes should not replace a comprehensive law on labor migration, they play an

\textsuperscript{126} Gen. Rec. 26, \textit{supra} note 7 at arts. 26(c)(iii) and (iv).
\textsuperscript{127} C189, \textit{supra} note 6 at art. 8(4).
\textsuperscript{128} Gen. Rec. 26, \textit{supra} note 7 at art. 24(h).
\textsuperscript{129} Sub-decree 190, \textit{supra} note 1 at art. 26.
\textsuperscript{130} Sub-decree 190, \textit{supra} note 1 at art. 27.
\textsuperscript{131} This is mandated in article 15(2) of C189.
important role during the period from now until a labor migration law is enacted, and can in fact influence the drafting of comprehensive legislation. As a result, it is important for the regulations to be comprehensive insofar as the protections they enshrine, to be rights-based, and adhere to rule of law drafting principles of clarity and specificity. The regulations will be examined in light of their legal effect.

i) Bilateral agreement or MOU

A bilateral agreement or MOU signed by Cambodia and Malaysia would confer strong legal rights to domestic workers while they are employed in Malaysia. Article 14 of the new Sub-decree provides that the MoLVT “shall cooperate with the Ministry of Foreign Affairs and International Cooperation to prepare agreements or memoranda of understanding between the Royal Government of Cambodia and the receiving country on the use of workforce.”132 This important article opens a window of opportunity for the Royal Government of Cambodia to negotiate directly with the Government of Malaysia on the use of its workforce.

While the article provides for an ‘agreement’ or an MoU, the legal status of these instruments differ. While an MOU expresses the intention and will of the parties, it is generally not legally binding. A bilateral agreement between two countries, on the other hand, is legally binding. Thus, a bilateral agreement between Cambodia and Malaysia would be preferable to an MoU, as it would constitute the basis for a domestic worker to bring a cause of action in Malaysian courts of law if the terms and conditions of the MOU were violated by the employer or recruitment agency.

On December 1, 2011, in light of a new Protocol amending the 2006 MOU between Indonesia and Malaysia133 on the recruitment of Indonesian domestic workers, the freeze on the sending of Indonesian domestic workers enacted in 2009 was lifted by the Indonesian Government. The new Protocol confers new rights to domestic workers, such as the right to keep one’s passport, the right to be paid once per month, the right to one day of rest per week and to communicate with one’s family,134 but falls short of international standards in other areas. Notably, it allows the market to determine wages instead of guaranteeing minimum wage, and does not prohibit salary deductions. As this report was going to press, the MoLVT had taken steps

132 Sub-decree 190, supra note 1 at art. 14.
133 The 2006 MOU and the 2011 Protocol are attached to this report as appendices.
134 Protocol Amending the Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Malaysia, 2011, Governments of Malaysia and the Republic of Indonesia, arts. 5.3, 5.6, 5.7, and 6.3.
to begin negotiating an MOU with the Government of Malaysia. While the Indonesian MOU could be used as an example for the Cambodian MOU with Malaysia, the Cambodian Government should push for minimum protections according to international standards.

**ii) Standardized Employment Contract**

Sub-decree 190 states that standard contracts will be issued in a *prakas*.\textsuperscript{135} Contracts are important instruments of protection, in that they confer rights and obligations on the part of the worker, recruitment agencies and employers. The *prakas* itself would not be legally enforceable, as it is not a law. Thus, a domestic worker would not be able to sue on the basis of the *prakas* if her employment contract does not match the sample in the *prakas*. Rather, a domestic worker would be limited to the recourse available in the Sub-decree.

A standardized employment contract that confers basic labor rights to domestic workers is an important instrument of protection, because a contract is a legal document that is enforceable in courts of law, so long as it is not voidable. In the absence of labor laws protecting domestic workers in Malaysia, the employment contract is the strongest legal protection available. If there are violations of the employment contract while the worker is in Malaysia, she may seek recourse through the Malaysian justice system. It is important that the employment contract be enforceable in the country in which the work is performed, so that a worker may seek recourse against the employer. A limitation is that once in Cambodia, the worker would not likely be able to seek recourse against the employer in the Cambodian court system, unless the labor law was amended to apply to domestic workers and the employment of Cambodians, regardless of the country of employment.

As this report was going to press, the MoLVT had taken steps to start negotiating a standardized employment contract in consultation with stakeholders. The new Protocol to the MOU between Indonesia and Malaysia includes a standardized employment contract as an annex. This standardized contract could serve as an example for the Cambodian standardized contract; however, certain amendments should be made to ensure that domestic workers enjoy minimum protections according to international standards. For example, the Indonesian standardized contract does not specify what is meant by “reasonable” accommodation and food provided by

\textsuperscript{135} Sub-decree 190, *supra* note 1 at art. 18
the employer. It also does not provide for sick leave, annual leave, overtime, payments in kind, the freedom to leave the work premises when not working, and social security.

iii) Standardized Job Placement Services Contract

Sub-decree 190 states that the job placement services contract between the worker and the recruitment agency be written in accordance with the law in Cambodia.\textsuperscript{136} Therefore, this contract would be enforceable in Cambodia. A limitation is that it would not likely be enforceable while the worker is in Malaysia.

Like the standardized employment contract, the job placement services contract is an important protection for domestic workers, as it is legally enforceable between the parties. However, also similarly to the case of the employment contract, the prakas itself would not be legally enforceable. Thus, the domestic worker would not have legal recourse against the recruitment agency if her contract does not conform to the sample in the prakas. However, the worker would have the recourses outlined in the Sub-decree at her disposal.

As this report was going to press, the MoLVT had taken steps to start negotiating a standardized job placement services contract in consultation with stakeholders. The MoLVT should ensure that the standardized contract address medical testing confidentiality and privacy, food and accommodation standards at the recruitment agency training centers, freedom of movement of trainees, and effective mechanisms for complaints and dispute resolution.

iv) Standardized Training

A standardized curriculum would ensure that domestic workers are provided with the opportunity to gain new skills; however, a guideline on curriculum, as authorized by Article 7(b), would not be legally enforceable. It would be limited to the recourses contained in Sub-decree 190. As this report was going to press, the MoLVT had taken steps to start to negotiate standardized pre-departure training curriculum in consultation with stakeholders. According to international standards in General Recommendation No. 26, the standardized pre-departure training curriculum should cover labor contracts, legal rights in the destination country,

\textsuperscript{136} Sub-decree 190, supra note 1 at art. 17
procedures for complaints and dispute resolution, culture in the destination country, emergency contacts, including civil society organizations, and HIV.\textsuperscript{137}

v) Effective Implementation of the Sub-decree

A circular that fills in the gaps of Sub-decree 190 to ensure its effective implementation, as authorized by Article 41, would not be a legally enforceable document. Thus, a domestic worker would not be able to bring a case to court on the basis of such a document. However, it would be subject to the recourses contained in the Sub-decree.

As this report was going to press, the MoLVT had taken steps to negotiate relevant circulars in consultation with stakeholders. These circulars should address, among others, the following issues: forgery and falsification of documents, the prohibition of third party brokers, information on how to obtain independent legal advice when domestic workers are signing their work contracts, prohibition of enticement loans, a duty to investigate when a worker disappears, inspections of workplace and training centers, mechanisms for complaints and dispute resolution, and services relating to abuse and repatriation.

5. Recourse for domestic workers under Sub-decree 190

As it is not a law, Sub-decree 190 does not constitute the basis for a cause of action in the courts. It does, however, provide for three recourses for domestic workers whose rights have been violated: compensation through the guaranty deposit, a penalty provision for recruitment agencies, and punishment by applicable laws. A limitation is that the first two recourses can only be realized through the MoLVT in Cambodia, while the last recourse could be sought through the judicial system in Cambodia, and Malaysia in some circumstances.

Guaranty Deposit

Both the new and old sub-decrees impose a guaranty deposit, or surety fund, in the amount of $100,000 USD that must be deposited by the recruitment agency to the accounts of the

\textsuperscript{137} Gen. Rec. 26, supra note 7 at art. 26(b)(i)
MoLVT as a condition to obtaining a license.\textsuperscript{138} This fund functions as a safety net for workers, as funds may be withdrawn by the MoLVT to compensate workers in certain circumstances. While Sub-decree 57 provided that the fund may be withdrawn for breach of the work contract, the new Sub-decree 190 provides that the fund may only be withdrawn for breach of the job placement service contract between the worker and the recruitment agency or the contract between the agency and the MoLVT. Thus, it removes the protection for workers of breaches of the employment contract. Significantly, it does not apply to the provisions of dispute resolution in the Sub-decree.

What’s more, under Sub-decree 190, the fund may be withdrawn if the recruitment agency “[fails] to resolve the issue according to the conciliatory principle.”\textsuperscript{139} However, there is no indication as to what is meant by the ‘conciliatory principle.’ It is not clear whether this confers a right to participate in conciliation, an extra-judicial dispute mechanism, or whether it is meant to be an informal process. The latter may present difficulties, given the unequal bargaining power of the worker vis-à-vis the recruitment agency. Given that a worker may sue the recruitment agency on the basis of her job placement service contract, it appears as though this provision may act as a deterrent for workers to bring their causes of action to the courts. Despite this, it has been found that the surety fund had never been used to compensate any worker.\textsuperscript{140}

**Penalties for recruitment agencies**

The old Sub-decree provided for the annulment of provisions of the contract that are in contravention of the Sub-decree.\textsuperscript{141} The new Sub-decree removes this protection and instead describes a penalty provision for the violation of any provisions of the Sub-decree by a recruitment agency. This penalty provides for three penalties: “written warning; temporary suspension of authorization; and revocation of authorization.”\textsuperscript{142} The old Sub-decree, then, provided greater protection to the worker by automatically annulling any provisions that were contrary to the regulation. Without this protection, it would be more onerous on the worker to prove why the provision in question should be annulled.

\textsuperscript{138} Sub-decree 190, supra note 1 at art. 8. See also Sub-decree 57, supra note 24 at art. 7.
\textsuperscript{139} Sub-decree 190, supra note 1 at art. 10
\textsuperscript{140} UNIAP, supra note 27 at 49.
\textsuperscript{141} Sub-decree 57, supra note 24 at art. 21.
\textsuperscript{142} Sub-decree 190, supra note 1 at art. 39.
The new Sub-decree instead focuses on punishing the recruitment agency, which could be a powerful deterrent if the penalty provision were enforced. Under international standards, penalties should include “prohibition of those private recruitment agencies that engage in fraudulent practices and abuses.”\textsuperscript{143} As written, Sub-decree 190 does not supply enough information on the procedure for issuing warnings, and suspending and revoking licenses. In particular, it does not address repeat offenders, or specify sanctions for fraud and abuse. Thus, it is “unlikely to be effective in deterring recruitment agencies from engaging in abusive or fraudulent practices.”\textsuperscript{144}

**Punishment by applicable law: contract, criminal, trafficking and international law**

Sub-decree 190 provides that recruitment agencies or individual persons shall be punished under applicable laws for violating any provisions of the Sub-decree or applicable laws.\textsuperscript{145} As the Sub-decree applies to the recruitment of workers through a recruitment agency, it is curious as to why ‘individual persons’ is included in the article. It appears to be an effort to separate recruitment agencies from the actions of their brokers in rural areas and avoid punishment.\textsuperscript{146} In addition, although the Sub-decree allows for punishment under applicable laws for the violation of any provision of the Sub-decree, punishment would only apply to those provisions that are already governed by other applicable laws. Although the applicable laws are not defined, the applicable Cambodian laws include the *Criminal Code of the Kingdom of Cambodia* (2009), the *Law on the Suppression of Human Trafficking and Sexual Exploitation* (2008), *Labor Code* (1997), *Decree No. 38 on the Law referring to Contracts and other Liabilities* (1998), and the *Civil Code* (2007). At international law, applicable law could include the *Optional Protocol* to CEDAW (1999), which Cambodia has ratified.

There are a number of articles of the Criminal Code that could apply to migrant domestic workers during recruitment and employment. The Code prohibits unlawfully confining another person,\textsuperscript{147} which could apply to confinement inside training centers in Cambodia, as well as confinement in the home of the employer in Malaysia. The Code also prohibits taking a minor

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\textsuperscript{143} C189, supra note 6 at art. 15(c).
\textsuperscript{144} Human Rights Watch, supra note 4 at 79.
\textsuperscript{145} Sub-decree 190, supra note 1 at art. 40.
\textsuperscript{146} Cambodian League for the Promotion and Defense of Human Rights (LICADHO), *Comments on the Sub-Decree on 'The Management of the Sending of Cambodian Workers Abroad through Private Recruitment Agencies*, (Phnom Penh: Licadho, 2011) at 5.
\textsuperscript{147} Criminal Code, supra note 28 at art. 253.
away from the person who has legal custody, which could be applicable in cases of recruitment of underage workers.\textsuperscript{148} Also relevant to underage workers is the prohibition against fraud, which is relevant to the falsification or forgery of identity documents.\textsuperscript{149} The Criminal Code applies to crimes committed inside the territory of the Kingdom of Cambodia, and felonies committed outside of Cambodia where the victim is a Khmer citizen.\textsuperscript{150} As confinement can be a felony if the duration of the confinement is for more than one month, the Code could apply to Cambodian domestic workers who are confined in Malaysia for the requisite period of time.

The Law on the Suppression of Human Trafficking and Sexual Exploitation applies to Khmer citizens inside the territory of Cambodia and outside of the country where the victim is a Cambodian citizen. The relevant provisions to migrant domestic workers include the unlawful removal of a minor;\textsuperscript{151} unlawful recruitment for exploitation,\textsuperscript{152} which could apply to recruitment agencies and their brokers; the buying, selling, and exchanging of human beings;\textsuperscript{153} the act of transporting a victim;\textsuperscript{154} and confinement.\textsuperscript{155}

The Labor Code provides limited protection to domestic workers; however, the provisions on forced labor and the hiring of people to pay off debts\textsuperscript{156} apply to all workers. The Labor Code’s application is limited to within the territory of Cambodia.

The Civil Code, which came into effect on December 21, 2011, provides for the rescission of contracts where there is fraud, misrepresentation, abuse of circumstance, or where one party benefits excessively from the contract. A contract can also be nullified where the contract is not consistent with public order and good customs.\textsuperscript{157} Prior to the enactment of the Civil Code, Decree No. 38, the law on contracts, “[had] a number of provisions that could be applied to protect the rights of domestic workers during their recruitment. For instance, article 5 states that the contract is ‘deemed void when it is illegal, and not consistent with public order or good customs’ and when ‘made by a party lacking capacity to contract.’”\textsuperscript{158} These would apply to the job placement service contract between the worker and the recruitment agency, as this contract is in accordance with Cambodian law and regulations. However, if the employment contract is signed in Cambodia prior

\textsuperscript{148} Criminal Code, supra note 28 at art. 327.
\textsuperscript{149} Criminal Code, supra note 28 at art. 377.
\textsuperscript{150} Criminal Code, supra note 28 at art. 20.
\textsuperscript{151} Law on the Suppression of Human Trafficking and Sexual Exploitation, 2008, Royal Government of Cambodia, at arts. 8 and 9.
\textsuperscript{152} Ibid. at art. 12.
\textsuperscript{153} Ibid. at arts. 13 – 16.
\textsuperscript{154} Ibid. at art. 18.
\textsuperscript{155} Ibid. at art. 21.
\textsuperscript{156} Labor Code, supra note 12, at arts. 14 and 15.
\textsuperscript{157} Civil Code, 2007, Royal Government of Cambodia, arts. 347-349, 351, 357 and 359.
\textsuperscript{158} Human Rights Watch, supra note 4 at 53.
to departing for Malaysia, an argument could be made that Decree No. 38 would apply to this contract for the pre-departure period. Once in Malaysia, Malaysian contract law would govern the employment contract.

The recent enactment of the Civil Code has introduced a new law on negligence. Thus, the Code could also apply in cases of negligence, where a foreseeable act harms another due to a lack of care. In these cases, the domestic worker could sue for damages.\(^{159}\) In Cambodia, recruitment agencies would have a duty of care towards domestic workers. Once in Malaysia, the Malaysian law on negligence would apply to the duty of care between the employer and the domestic worker and the Malaysian recruitment agency and the worker.

Finally, at international law, individuals or groups of individuals who have been a victim of a violation of rights enshrined in CEDAW, may submit a communication to the Committee on the Elimination of Discrimination against Women.\(^{160}\) If admissible, the Committee would bring the communication to the attention of the state party with recommendations and the state party must provide a written response within 6 months that details any action taken on the basis of these recommendations. If grave or systematic violations are found, the Committee may conduct an inquiry.\(^{161}\) Although this procedure will not result in a remedy for individual domestic workers who bring the communication, it can be a strong impetus for the Cambodian Government to change discriminatory laws or practices to protect its domestic workers.

6. Other recommendations for the protection of Cambodian migrant domestic workers

i. **Ratify C189**: The Royal Government of Cambodia is urged ratify C189 Concerning Decent Work for Domestic Workers.

ii. **Adopt a comprehensive labor migration law**: The Royal Government of Cambodia should adopt a comprehensive labor migration law to ensure that the rights of domestic workers are protected by a legally binding instrument.

\(^{159}\) Decree No. 38 Law Referring to Contract and Other Liabilities, 1988, Royal Government of Cambodia, arts. 742 and 743.


\(^{161}\) Ibid. at 6, 7, and 8.
iii. **Include domestic workers in labor law:** The Royal Government of Cambodia should include domestic workers in its labor law to ensure that domestic workers working in Cambodia enjoy minimum labor standards like other workers.

iv. **Adopt enabling legislation for Sub-decree 190:** The Royal Government of Cambodia is urged to adopt enabling legislation that would change the status of the Sub-decree from a regulation to binding law.

v. **Enforcement:** The law is only as effective as its enforcement by the judiciary, police and other authorities. The Royal Government of Cambodia is urged to adopt measures to ensure that Sub-decree 190 and other regulations relating to labor migration are effectively enforced by the MoLVT. The penalties for perpetrators and remedies for victims outlined in Sub-decree 190 should be used consistently as a means to deter recruitment agencies from violating the rights of domestic workers.
7. Bibliography


*Circular No. 2647*, Ministry of Labor and Vocational Training, Kingdom of Cambodia, 2010.


*ILO Convention No. 189 concerning Decent Work for Domestic Workers (Domestic Worker’s Convention)*, adopted June 16, 2011.

*ILO Recommendation 201*, adopted June 16, 2011.

ILO. *Study on Living and Working Conditions of Domestic Workers in Cambodia*. (Bangkok: ILO, 2010).


Sorachor No. 11 on the Prohibition of Recruitment, Training, or Sending of Cambodian Migrants to Work as a Domestic Worker in Malaysia, Kingdom of Cambodia, 2011.


